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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/488,686

01/20/2000

LOI NGUYEN

93-C-078C1 (1678-20)

4788

30431 7590 08/06/2009

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EXAMINER

WILLIAMS, ALEXANDER O

ART UNIT

PAPER NUMBER

2826

MAIL DATE

DELIVERY MODE

08/06/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/488,686	<b>Applicant(s)</b> NGUYEN ET AL.	
	<b>Examiner</b> Alexander O. Williams	<b>Art Unit</b> 2826	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

Art Unit: 2826

Serial Number: 09/488686  
RE(1620)

Attorney's Docket #: 93-C-078C1-

Filing Date: 1/20/00;

Applicant: Nguyen et al.

Examiner: Alexander Williams

Applicant's Response to the Ex Parte Quayle filed 10/8/09 has been acknowledged.

Applicant's Amendment filed 12/10/07 has been acknowledged is not in proper form. Amended claims 1, 7 and 12 must contain brackets and underlining in relation to the patent. New claims 19-34 must be completely underlined without any brackets or strikethrough.

All subject matter being added to an original patent claim must be underlined. All subject matter being deleted from an original patent claim must be placed between brackets. 37 CFR 1.173(b)(2) and (d). See MPEP 1455.

Remind applicant that maintenance fees are due 11.5 years from the patent issue date, i.e, July 20, 2009.

If the patent has expired due to end of term or due to the failure to pay the required maintenance fees, all of the claims lack basis for reissue under 35 U.S.C. 251, because by statute a reissue application can only be granted for the unexpired portion of the term of the original patent. Cite In re Morgan, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1983), which holds that reissue applications can only be issued for unexpired patents. If the patent term has expired due to the end of its term, the matter should immediately be referred to an Office of Patent Legal Administration Senior Legal Advisor via the TC SPRE. If the patent term has expired due to nonpayment of maintenance fees, a petition under 37 CFR 1.377 or 37 CFR 1.378 (to establish payment of maintenance fees) can be filed, and if granted, will reinstate the original patent. In this instance, the patent owner (applicant) should be contacted by the examiner and asked if such a petition will be filed, and the response then made of record by Interview Summary Form (a matter bearing on the potential termination of the reissue proceeding clearly goes to the merits. Where the patent owner commits to filing such a petition and same is seasonably filed, an appropriate suspension of action in the reissue application should be effected pending resolution of the petition. Where the patent owner does not commit, or fails to seasonably file a petition, the matter should be referred to an Office of Patent Legal Administration Senior Legal Advisor via the TC SPRE.

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

Claims 1-34 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the declaration is set forth in the discussion above in this Office action.

The reissue declaration was filed 4/17/2000, whereas claims have been amendment since that declaration. There are errors not covered by an oath or declaration. Applicant must submit a supplemental oath or declaration. See 37 CFR 1.175(b)(1) and MPEP 1414.01. Form PTO/SB/51S may be used by the applicant to prepare a supplemental reissue declaration.

## **Response**

Applicant's arguments filed 10/12/08 have been fully considered, but are moot in view of the new grounds of rejections detailed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander O Williams whose telephone number is (571) 272 1924. The examiner can normally be reached on M-F 6:30-7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sue Purvis can be reached on (571) 272 1236. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2826

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alexander O Williams/  
Primary Examiner, Art Unit 2826

AOW  
4/11/08